

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES ROLAND CHEATHAM,

Defendant.

Case No. 2:18-cr-00131-RAJ

ORDER

THIS MATTER comes before the Court on Defendant's Motion for  
Compassionate (Supervised) Release. Dkt. # 1387.

"The filing of a notice of appeal 'confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'" *United States v. Ortega-Lopez*, 988 F.2d 70, 72 (9th Cir. 1993) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). Under Rule 37 of the Federal Rules of Criminal Procedure, if a party moves for relief that a court lacks authority to grant because an appeal is pending, the court has three options: "(1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." Fed. R. Crim. P. 37.

Defendant Charles Roland Cheatham filed a notice of appeal, in which he challenges this Court's rulings on Defendant's Motion to Suppress Evidence from

1 Tracking Warrants and Historical Data and on Defendant's Motion to Suppress Evidence  
2 Obtained by Unlawful Interception of Telephonic Communications. Dkt. # 1232. The  
3 appeal is still pending. *Id.* Mr. Cheatham now moves to modify his term of  
4 imprisonment under 18 U.S.C. § 3582(c)(1)(A)(i). Dkt. # 1237. But because an appeal is  
5 pending, the Court is without jurisdiction to consider the motion. The Ninth Circuit has  
6 been conferred jurisdiction, and this Court has been divested of control "over those  
7 aspects of the case involved in the appeal." *Ortega-Lopez*, 988 F.2d at 72. Mr.  
8 Cheatham's conviction and sentencing are aspects of the case involved in the appeal, and  
9 thus the Court does not have jurisdiction to modify his sentence. Under Rule 37 of the  
10 Federal Rules of Criminal Procedure, the Court has three options. The Court exercises  
11 the second: it denies the compassionate release motion without prejudice to refiling once  
12 the appeal process has concluded and once this Court has jurisdiction.

13 For the reasons stated above, the Court **DENIES without prejudice** Defendant's  
14 Motion for Compassionate (Supervised) Release. Dkt. # 1387.

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16 DATED this 3rd day of November, 2020.

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19 The Honorable Richard A. Jones  
20 United States District Judge  
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